

Paul-Kenneth: Cromar, ID #567164

c/o Sheriff
Davis County Jail
800 West State Street
P.O. Box 618
Farmington, Utah 84025-0618
Phone: 801-451-4100

FILED US District Court-UT
MAY 02 '24 PM 02:53

[Pro Se] *sui juris*

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff *in error*,

vs.

PAUL KENNETH CROMAR,

Defendant *in error*

Case No. 2:23-cr-00159-HCN-DBP

DEFENDANT'S MOTION TO DISMISS
FOR INSUFFICIENT
SERVICE OF PROCESS

District Judge Howard C. Nielson, Jr.
Magistrate Judge Dustin B. Pead

Comes now, Paul-Kenneth: Cromar¹, "Ken Cromar", Defendant *in error*, *sui juris* [*pro se*], who brings to this court his **Defendant's Motion to Dismiss for Insufficient of Service of Process**

MEMORANDUM OF POINTS AND AUTHORITIES

1. To date, The Government Prosecutors have violated federal rules for failing to provide service of process to Defendant claiming that they have met their requirement by simply having mailed two or three (certified returned receipts) of their documents to the jail. But not only have they failed to show that the jail itself ever received service of process in behalf of inmate Defendant Cromar, just mailing their documents is not enough to fulfill

¹ See Footnotes #1-4, 7-8, from Defendant's Motion to Dismiss (Docket #70) and also, as of yet unrebutted Defendant's AFFIDAVIT (Docket #71) for jurisdiction and definition of terms. Note: An unrebutted affidavit stands as fact. I elected to proceed only under Constitutional Common Law (see Docket #25).

this requirement. But, Defendant is expecting the Government to do their usual “skirting around their rule of ethics” by attempting to cite case law or rules showing that they just really don’t have to.

2. The jail has always been timely and responsible for providing mail to Defendant from his team as long as the envelope would say “legal mail” and told Defendant that he would receive any legal mail that would come from a bar attorney, but Defendant has not received service of process on all of Government’s court filed documents.
3. Defendant is accusing the Government Prosecutors for only mailing a few of them (certified returned receipts), or mailing them to an old address in a strategic effort to defeat, obstruct and stop Defendant from properly defending himself.
4. The Government Prosecutors could easily accomplish their service of process to inmate Defendant Cromar by other means as provided by the rules:

“By a Marshal or Someone Specially Appointed.... the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. (Federal Rules of Procedure 4(c)(3).)

5. Government Prosecutors have made no known attempt to work with the court to make sure Defendant receives service of process. The court has shown concern regarding this service of process problem and has turned to the prosecutors to come up with a solution, but the only response the court and Defendant has received from the prosecution is excuse after poor excuse. This was carefully documented in “Defendant’s Verified Emergency Motion For Revocation of Detention Order” Dkt. 142 paragraphs 101-103 with copious references to the transcript of various hearings:

“In the October 18, 2023, hearing, Mr. Cromar explained that Prosecutors, in act of negligence attempted to provide discovery by sending it to his old P.O. Box, with the knowledge that Mr. Cromar had no access to that P.O. Box address because he was in jail. This would not have been a problem if Mr. Cromar was given his pretrial release.² Discovery mailed to Mr. Cromar September 27th but did not receive it until October 9th.³

² Transcript of Oct 18, Pg.7-8 (Discovery sent to Mr. Cromar’s old P.O. Box)

³ Transcript of Oct 18, Pg.8-9 (Discovery mailed Sept 27th received Oct 9th.)

During the November 15, 2023, hearing, Mr. Cromar explains to the court that he has not received service of process from the government on any of its court-filed documents. (See sealed portion of the November 15, 2023 hearing, as well as footnote⁴) “

6. This insufficient service of process left Defendant blindly dependant on his friends (who were denied by the court to serve as “assistants of counsels”) to let him know what is going on with the case, trusting that the information that was provided was complete, accurate, and timely.
7. This burden violates inmate Defendant Cromar’s Fifth Amendment Due Process⁵. The Prosecutors are obligated under the Fifth Amendment Due Process to communicate with the jail or work with the court to make sure that Defendant receives sufficient service of process.
8. As supporting evidence to their insufficient service of process, **none** of their court filings include a certificate of service of process. As of May 1st a careful inspection of the

⁴ **Transcript of Oct 18, Pg.39 Ln.16-22** “CROMAR: Well, that would be problematic, because it's difficult to prepare for trial if discovery has not all been provided. COURT: Well, I totally agree. CROMAR: And in the case of technology of the day, it's not overly difficult to get all the material onto the laptop.”

Transcript of Oct 18, Pg.40 Ln.1-3 “COURT: I want all the discovery on the laptop. What I’m talking about, the rolling batches are if we have to keep tablets.”

Transcript of Nov 15, Pg.43 Ln.2-4

Transcript of Jan 11, Pg.10 Ln.13, 14, 21-25 “CROMAR: I don’t recall seeing this. And I would wonder if there’s a certificate of service, as required here. MR. WOOLF: Your Honor, the defendant’s been handed it directly in open court, so he has it today. COURT: Has it otherwise been served, apart from handed in open court? MR. WOOLF: It has not yet been mailed, no, Your Honor.”

Pg.11 Ln.9-12 “CROMAR: I would object to being handed this document that’s dated the 4th, seven days ago. It was not served. And normally you would serve shortly thereafter filing, I mean, within the same day, make the attempt.”

Pg.13 Ln.7-16 “COURT: Mr. Woolf, for the record, what was the government’s intent regarding it? Was it to provide it in person? Because there is no certificate of service on the back. MR. WOOLF: The government’s intent was to provide it in person today at this hearing so that Mr. Cromar could review it and have a chance to respond at the ti me that he discussed with the court. COURT: The service was intended to be here in person, having already set the schedule.”

⁵ See Fifth Amendment, U.S. Constitution “No person shall be held to answer for a capital, or otherwise infamous crime...without due process of law.”

history of the court filings exposes that not one single filing by the prosecution for the UNITED STATES OF AMERICA includes a proof of service.

9. Regardless if it could be argued if a certificate is required on the document, the Prosecutors are still required by law to serve the Defendant all filed pretrial documents or the case by motion could be dismissed.
10. However, prosecutors recognized their duty as indicated by having sent at least two filings December 4th and 15th, 2023 via USPS certified mail to defendant Cromar at the jail. This first December 4th mailing was received by Defendant Cromar a shamelessly 97 full days after incarceration. (See USPS tracking numbers #9589 0710 5270 0179 5377 17 and #9589 0710 5270 0179 5379 08.) (See Exhibit "A")
11. In a recent email to Vanessa Ramous and Kris Angelos through the public defender's office as a message to be conveyed to Defendant Cromar, the Government Prosecutors told inmate Defendant Cromar that:

"We are willing as a **courtesy** only to mail you courtesy copies of the government's future filings.... Understand that **service of the government's filings is effective upon electronic filing** in the ECF system. Although we will mail you courtesy copies of future filings, you should not rely upon those mailings to stay informed about the docket filings in your case. (See Exhibit "B" Email from the prosecutors) (Emphasis)
12. The Government Prosecutors knows very well that Defendant Cromar is in a jail that has no internet access. Therefore it is impossible for them to honestly conclude that Defendant Cromar received service.

CONCLUSION

Federal Rules of Civil Procedure is Rule 12(b)(5) permits a defendant to file a motion to dismiss a case for insufficient service of process.⁶

⁶ "But a party may assert the following defenses by motion: insufficient service of process;" (See Federal Rules of Civil Procedure is Rule 12(b)(5))

PRAYER AND RELIEF

Therefore, inmate Defendant Cromar moves the court to dismiss this case due to the intentional failure (that appears to be strategic) of the Government Prosecutors to provide service of process.

Presented in honor in the year of our Lord and in His name the 2nd day of May, 2024.

©
by: Paul-Kenneth Cromar TM

Paul-Kenneth: Cromar

As per docket #25 of September 27, 2023 "I elect to proceed under Constitutional Common Law."

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2024, I personally placed in the United States Mail to the individuals named below a true and correct copy of **DEFENDANT'S MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS**

TRINA A. HIGGINS
PATRICK BURNS
MEREDITH M. HAVEKOST
Attorneys of the United States of America
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111

Raland Brunson
Raland Brunson

EXHIBIT A

Tracking Number:

9589071052700179537908

 Copy  Add to Informed Delivery

Latest Update

Your item has been delivered to an agent for final delivery in FARMINGTON, UT 84025 on December 15, 2023 at 8:33 am.

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Delivered to Agent

Delivered to Agent for Final Delivery

FARMINGTON, UT 84025
December 15, 2023, 8:33 am

Available for Pickup

FARMINGTON
145 E STATE ST
FARMINGTON UT 84025-9998
M 0830-0845
December 15, 2023, 8:32 am

Arrived at Post Office

FARMINGTON, UT 84025
December 15, 2023, 6:44 am


Arrived at USPS Regional Facility

SALT LAKE CITY DISTRIBUTION CENTER
December 14, 2023, 11:13 am

 Hide Tracking History

Tracking Number:

9589071052700179537717

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Latest Update

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

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• Delivered

• Out for Delivery

• Preparing for Delivery

Moving Through Network

In Transit to Next Facility

December 7, 2023

Arrived at USPS Regional Origin Facility

SALT LAKE CITY DISTRIBUTION CENTER
December 2, 2023, 12:51 pm

 See All Tracking History

EXHIBIT B

This email came from the Government Prosecutors to Defendant Cromar through his stand by counsel Kristen R. Angelos and Vanessa Ramos of the Public Defender's Office

From: Burns, J. Patrick (TAX) <J.Patrick.Burns@usdoj.gov>
Sent: Wednesday, April 24, 2024 9:13 AM

[Mr. Cromar,]

We are willing as a courtesy only to mail you courtesy copies of the government's future filings. We are unaware of a local rule or specific order in this case that requires the government to mail you copies of its filings. If we are overlooking such a rule or order, please point it out. Understand that service of the government's filings is effective upon electronic filing in the ECF system. Although we will mail you courtesy copies of future filings, you should not rely upon those mailings to stay informed about the docket filings in your case. The Court has appointed you more than ample resources to monitor and produce printed copies of the electronic docket filings in your case. What use you make of those resources is your own business and you are entitled to continue inflicting delay and inconvenience on yourself. You are not, however, entitled to have the government remedy those self-inflicted delays and inconveniences. We expect you to meet all the filing deadlines in this case irrespective of your claim to need the government to provide paper copies of its filings. You should not expect any extensions of those deadlines.